**Britain's unwritten constitution**

* Article by:[Robert Blackburn](https://www.bl.uk/magna-carta/articles/britains-unwritten-constitution#authorBlock1)
* Theme:[Magna Carta today](https://www.bl.uk/magna-carta/themes/magna-carta-today)
* Published:13 Mar 2015

**Unlike most modern states, Britain does not have a codified constitution but an unwritten one formed of Acts of Parliament, court judgments and conventions. Professor Robert Blackburn explains this system, including Magna Carta’s place within it, and asks whether the UK should now have a written constitution.**

For most people, especially abroad, the United Kingdom does not have a constitution at all in the sense most commonly used around the world — a document of fundamental importance setting out the structure of government and its relationship with its citizens. All modern states, saving only the UK, New Zealand and Israel, have adopted a documentary constitution of this kind, the first and most complete model being that of the United States of America in 1788. However, in Britain we certainly say that we have a constitution, but it is one that exists in an abstract sense, comprising a host of diverse laws, practices and conventions that have evolved over a long period of time. The key landmark is the Bill of Rights (1689), which established the supremacy of Parliament over the Crown following the forcible replacement of King James II (r.1685–88) by William III (r.1689–1702) and Mary (r.1689–94) in the Glorious Revolution (1688).

From a comparative perspective, we have what is known as an ‘unwritten constitution’, although some prefer to describe it as ‘uncodified’ on the basis that many of our laws of a constitutional nature are in fact written down in Acts of Parliament or law reports of court judgments. This aspect of the British constitution, its unwritten nature, is its most distinguishing characteristic.

### Features of Britain’s unwritten constitution

There are a number of associated characteristics of Britain’s unwritten constitution, a cardinal one being that in law Parliament is sovereign in the sense of being the supreme legislative body. Since there is no documentary constitution containing laws that are fundamental in status and superior to ordinary Acts of Parliament, the courts may only interpret parliamentary statutes. They may not overrule or declare them invalid for being contrary to the constitution and ‘unconstitutional’. So, too, there are no entrenched procedures (such as a special power of the House of Lords, or the requirement of a referendum) by which the unwritten constitution may be amended. The legislative process by which a constitutional law is repealed, amended or enacted, even one dealing with a matter of fundamental political importance, is similar in kind to any other Act of Parliament, however trivial its subject matter.

Another characteristic of the unwritten constitution is the special significance of political customs known as ‘conventions’, which oil the wheels of the relationship between the ancient institutions of state. These are unwritten rules of constitutional practice, vital to our politics, the workings of government, but not committed into law or any written form at all. The very existence of the office of Prime Minister, our head of government, is purely conventional. So is the rule upon which he or she is appointed, being whoever commands the confidence of the House of Commons (the majority party leader, or head of a coalition of parties).

The Monarchy is one of the three components of Parliament (shorthand for the Queen-in-Parliament) along with Commons and Lords. In legal theory, the Queen has absolute and judicially unchallengeable power to refuse her assent to a Bill passed by the two Houses of Parliament. However, convention dictates the precise opposite and in practice she automatically gives her assent to any government Bill that has been duly passed and agreed by Parliament. Another important convention is that government ministers must have a seat in Parliament (and, in the case of the Prime Minister and Chancellor of the Exchequer, specifically in the House of Commons) in order to hold office. This is a vital aspect of what is known as the ‘Westminster system of parliamentary government’, providing a direct form of executive responsibility and accountability to the legislature.

### The written documents of our unwritten constitution

There is irony in the fact that the United Kingdom today does not have a written constitution, yet historically it has had a rich heritage of pioneering constitutional charters and documentation. First and foremost is Magna Carta (1215), the ‘Great Charter of the Liberties of England’. This established the principle that our rulers, at that time the king, could not do whatever they liked, but were subject to the law as agreed with the barons they governed. This simple concept laid the foundations for constitutional government and freedom under the law. Insofar as Magna Carta was ‘the first great public act of the nation’, it also established the direction of travel for our political system towards representative institutions and, much later, democracy itself.

In 1258, the Provisions of Oxford, sometimes referred to as the first ever written constitution, provided for a Council of twenty-four members through whom the King should govern, to be supervised by a Parliament. This was convened for the first time in 1264 by Simon de Montfort (d. 1265). During the constitutional conflicts of the 17th century, the Petition of Right (1628) relied on Magna Carta for its legal basis, setting out rights and liberties of the subject including freedom from arbitrary arrest and punishment. The Bill of Rights (1689) then settled the primacy of Parliament over the monarch’s prerogatives, providing for the regular meeting of Parliament, free elections to the Commons, free speech in parliamentary debates, and some basic human rights, most famously freedom from ‘cruel or unusual punishment’. This was shortly followed by the Act of Settlement (1701) which controlled succession to the Crown, and established the vital principle of judicial independence.

Over the past century there have been a number of Acts of Parliament on major constitutional subjects that, taken together, could be viewed as creating a tier of constitutional legislation, albeit patchy in their range and with no special status or priority in law. They include:

* The Parliament Acts (1911–49) that regulate the respective powers of the two Houses of Parliament.
* The Representation of the People Acts (1918) (as amended) providing for universal voting and other matters of political representation.
* The European Communities Act (1972) making the UK a legal partner in the European Union.
* The Scottish, Welsh and Northern Ireland devolution Acts of 1998 (as amended) creating an executive and legislature for each of those three nations in the UK.
* The Human Rights Act (1998) establishing a bill of rights and freedoms actionable by individuals through the courts.

Recently, too, some conventions have been subject to an ad hoc codification, such as the principles of ministerial responsibilities in the Ministerial Code.

### Should the UK have a written constitution?

The question then arises in this 800th anniversary year — should the UK now take steps to codify all its laws, rules and conventions governing the government of the country into one comprehensive document, ‘a new Magna Carta’? The case for a written UK constitution has been debated at our universities and by politicians of all parties for several decades and has been the subject of a House of Commons committee inquiry during the 2010–15 Parliament. If a written constitution for the future is to be prepared, it must be one that engages and involves everyone, especially young people, and not simply legal experts and parliamentarians. Some of the mystique and charm of our ancient constitution might be lost in the process, but a written constitution could bring government and the governed closer together, above all by making the rules by which our political democracy operates more accessible and intelligible to all.

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